IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13606 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AGRICULTURE PRODUCE MARKET COMMITTEE-VADODARA - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR SK JHAVERI WITH MR DILIP B RANA for Petitioner(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2,
MR BS PATEL for Respondent(s) : 2,
MRS RANJAN B PATEL for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 22/12/2005

ORAL JUDGMENT

1.In the present petition, the petitioner Agriculture Produce Market Committee has challenged an order dated 19-04-2005 passed by the Deputy Secretary (Appeals)

Agricultural and Cooperation Department, Government of Gujarat. By the impugned order the Deputy Secretary was pleased to allow the revision application filed by the respondent no.2 herein and quash an order dated 27-12-2004 passed by the petitioner-market committee.

2.Short facts leading to the present petition are as follows :

2.1The petitioner-Agriculture Produce Market Committee is constituted under the provisions of Gujarat Agricultural Produce Market Act (here-in-after referred to as “the said Act”) having its operations in Baroda. Admittedly respondent no.2 is an industrial unit situated within the limits of the market area. The respondent no.2 for the purpose of its industrial operation purchases Castor Seeds from market and uses the same for its own consumption, extracts Castor Oil from Castor Seeds so purchased and sells the by-product called de-oiled cakes. The stand of the petitioner Market Committee is that the respondent no.2 is liable to pay the market fee on the purchase of Castor Oil Seeds as well as on sale of the Oil Cakes. It is the case of the petitioner Market Committee that the sale

of the Castor Seeds takes place within the market area and that therefore, respondent no.2 is liable to pay the fees as per the rules and regulations. Secondly, it is the contention of the petitioner-Market Committee that after extraction of Castor Oil from the Castor Seeds so purchased by the respondent no.2, the respondent no.2 sells the by-product which is also exigible to market fees. It is the contention of the petitioner that what the respondent no.2 is selling is oil cake.

2.2On the other hand, case of the respondent no.2 is that though respondent no.2 brings within the market area castor seeds, the sale thereof does not take place within the market area and respondent no.2 therefore, does not have to pay any fees on such purchase. Secondly it is also the contention of the respondent no.2 that after extracting oil almost completely from the castor seeds, what is sold by the respondent no.2 is de-oiled cake and not oil cake and item de-oiled cake would attract no market fees.

2.3 With this controversy between the parties, the petitioner insisted on recovering the market fees and

accordingly, by a demand notice dated 27-12-2004 called upon the respondent no.2 to pay a sum of Rs. 1,27,46,349.38ps to the petitioner towards market fees due and payable. The respondent no.2 being aggrieved by the insistence of the petitioner, filed a revision application before the State Government under the provisions of the said Act. The State Government after hearing both the sides passed the impugned order on 19-04-2005. Considering the provisions made under rule 48(2) of the Gujarat Agricultural Produce Market Rules, 1965 (here-in-after referred to as “the said Rules”), Deputy Secretary was of the opinion that the demand of the petitioner is not justified. It was observed that the provisions contained in sub-rule(1) of rule 48 of the said rules would not apply in the facts of the present case. It was also observed that since respondent no.2 does not sell the castor seeds brought from outside, it is not liable to pay any market fees on such an activity. It was further observed that since the respondent no.2 sells de-oiled cake, same is not covered under the schedule which specifies oil cake as one of the items on which market fees is leviable. The petitioner being aggrieved by the order passed by the State Government has approached this Court

challenging the impugned order dated 19-04-2005.

3. Issues arising in the present petition can be separated in two compartments. The first question that is required to be considered and decided is whether respondent no.2 is liable to pay market fee on the castor seeds which it purchases for its own consumption. Second question is with respect to the insistence of the petitioner to levy fees on the sale of the de-oiled cake which the respondent no.2 sells after extracting oil from the castor seeds. It is common ground that market fees is payable by the purchaser. However, it is the case of the petitioner and to which no dispute has been raised by the respondent no.2 that as a licensed seller, respondent no.2 owes a primary duty to the Market Committee to collect such market fees from the purchaser and deposit the same with the Market Committee. In this view of the matter, the legality of the demand of the petitioner regarding the market fees on sale of de-oiled cake would retain its significance and it would be necessary to decide the legality of such a demand in the petition though as noted, respondent no.2 is not primarily responsible to bear the burden of market fees in case

of sale of by-product.

4. In so far as the question of legality of the demand of the petitioner from respondent no.2 to pay the market fees on the purchase of Castor Oil Seeds is concerned, following factual aspects need to be taken into account before adverting to legal issues.

4.1 It is not in dispute that respondent no.2 has an industrial unit within the market area of the petitioner-Agriculture Produce Market Committee. It is not in dispute that the petitioner purchases large quantity of castor seeds for its consumption from outside of the market area. It is also not in dispute that order for purchase of said castor seeds is placed by respondent no.2 with the supplier situated outside the market area. The petitioner has produced several invoices, bills and payment receipts to demonstrate the nature of transactions between the buyer and seller in the present case to contend that in effect the sale of castor seeds actually takes place within the market area.

4.2 On the other hand the case of the respondent no.2 has all through out been that the respondent no.2 purchases

castor seeds from the suppliers from outside the market area and such sale takes place outside the market area. It bas consistently been the case of the respondent no.2 that sale is completed outside the market area and that therefore, no market fee can be collected by the petitioner-Market Committee on such sale.

4.3It is the case of the petitioner that the castor seeds so purchased by respondent no.2 is weighed within the market area and only upon weighment that actual payment is made to the seller by the respondent no.2. It is therefore, the case of the petitioner that the sale can never be said to have been completed outside the market area and that essentially sale actually takes place within the market area when the consignment is weighed and final payment is decided upon. Reliance is placed in this regard on sub-rule(1) of Rule 48 to which reference would be made at a slightly later stage. To the contrary respondent no.2 has been contending that though it is true that weighment of consignment of the castor seeds does take place within the market area, the same is only for the purpose of verifying any shortfall, loss or damage in transit and

not for the purpose of sale. It is therefore, strongly urged that sale having already been concluded outside the market area, the factum of weighment of the consignment would not change the nature of the transaction and permit the Court to draw a conclusion that sale actually took place within the market area.

5.In order to resolve the above legal controversy, few relevant provisions contained in the said Act and the said rules need to be noted at this stage :

5.1 Section 2(i) of the said Act defines the term “agricultural produce”. It reads as follows :

> “2(i) “agricultural produce” means all produce, whether processed or not, of agriculture, horticulture and animal husbandry, specified in the Schedule”

5.2 Section 28 of the said Act empowers the Market Committee to levy fee on agriculture produce brought or sold in the market area and provides inter-alia that Market Committee shall subject to the provisions of the rules and the maxima and minima, from time to time prescribe, levy and collect fees on the agricultural produce brought or sold in the market area. Section 28

reads as follows :

> “28 – Power to levy fee. The market committee shall, subject to the provisions of the rules and the maxima and minima from time to time prescribe levy and collect fees on the agricultural produce brought or sold in the market area;
>
> Provided that the fees so levied may be collected by the market Committee through such agents as it may appoint.”

5.3 The legislature has also provided for a schedule under section 2(1)(i) of the said Act specifying agricultural products. Sub-rule(IV) therein contains oil seeds. Item no.8 therein is castor seed and item no.11 therein is oil cakes.

5.4 Section 59 of the said Act empowers the State Government, by notification in the Official Gazette, to makes rules, either generally or specially for any market area or market areas for the purposes of carrying out the provisions of the Act.

5.5 In exercise of powers conferred on the State Government under section 59 of the said Act, the Government has made the said Rules. Rule 48 of the said rules pertains to market fees. Sub-rule(1) of rule 48

provides for minima and maxima subject to which the Market Committee can levy and collect fees on agriculture produce bought or sold in the market area. Explanation to rule 48 inter-alia provides that for the purpose of the said rules a sale of agricultural produce shall be deemed to have taken place in a market area if it has been weighed or measured or surveyed or delivered in case of cattle in the market area for the purpose of sale, notwithstanding the fact that the property in the agricultural produce has by reason of such sale passed to a person in a place outside the market area.

Sub-rule (2) of rule 48 provides for exemption from payment of fee of agricultural produce brought from outside the market area into the market area for use therein by the industrial concerns situated in the market area or for export.

Rule 49 of the said rules provides for recovery of fees.

Rule 48 and 49 reads as follows :

> “48- Market fees:-(1) The market committee shall levy and collect fees on agricultural produce bought or sold in the market area at such rate as may be specified in the bye-laws subject to the following

minima and maxima viz.,

(1) rates when levied ad valorem shall not be less than 30 paise and shall not exceed Rs.2(two) per hundred rupees.

(2) rates when levied in respect of cattle, sheep or goat shall not be less than 25 paise per animal and shall not exceed Rs.4 per animal.

Explanation.- For the purposes of this rule a sale of agricultural produce shall be deemed to have taken place in a market area if it has been weighed or measured or surveyed or delivered in case of cattle in the market area for the purpose of sale, notwithstanding the fact that the property in the agricultural produce has by reason of such sale passed to a person in a place outside the market area.

(2) No fee shall be levied on agricultural produce brought from outside the market area into the market area for use therein by the industrial concerns situated in the market area or for export and, in respect of which declaration has been made and a certificate has been made and a certificate has been obtained in Form V:

Provided that if such agricultural produce brought into the market area for export is not exported or removed therefrom before the expiry of twenty days from the date on which it was so brought, the market committee shall levy and collect fees on such agricultural produce from the person bringing the produce into the market area at such rates as may be specified in the bye-laws subject to the maximam and minimam specified in sub-rule(i) :

Provided that no fee shall be payable on a sale or purchase to which sub-section(3) of section 6 applies.

49 – Recovery of fees -(1) The fees on agricultural produce shall be payable as soon as it is brought into the principal market yard or sub-market yard or market proper or market area from the purchaser as may be specified in the bye-laws :

Provided that the fees so paid shall be refunded-

(i)on production of sufficient proof that such produce was not sold within the limits of the market area; or

(ii)if such produce is brought from outside the market area into the market area for use therein by the industrial concerns situated in the market area or for export and in respect of which a declaration has been made and a certificate has been obtained in Form V subject to the proviso to sub-rule(2) of rule 48.

(2) The licence fees payable under rule 56 and/or 57 shall be paid along with the application for licence but in case the market committee refuses the grant or renewal of a licence the fees recovered shall be refunded to the applicant."

6. Combined reading of provisions of the said Act and rules made therein and also taking note of the schedule the Act, it would become clear that for sale of any agricultural produce within the market area, the Market Committee is empowered to levy fee within the minima and maxima prescribed under the rules. It would therefore, appear that if the castor seed's sale or purchase by respondent no.2 does take place within the market area, respondent no.2 cannot escape the liability from paying the fees thereon to the Market Committee. The central question therefore, which is required to be decided here is at what stage does the sale take place between the respondent no.2 and its seller of the castor seeds.

7.To ascertain the exact point of time when the goods in question stand transferred from the seller to the buyer, provisions contained under section 19 and 20 of the Sale of Goods Act, 1930 can be noted :

> “19- Property passes when intended to pass.-(1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.
>
> (2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.
>
> (3) Unless a different intention appears, the rules contained in sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.
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> 20- Specific goods in a deliverable state.- Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made,and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed.”

8.In the present case there is no specific contract between the respondent no.2 and its supplier of castor seeds to enable us to ascertain the exact event of passing of the title. It would therefore, be necessary to ascertain when the transfer can be said to have

taken place based on the intention of the parties in this regard. Section 20 of the Sale of Goods Act, reproduced here-in-above would suggest that in an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of the payment of the price or the time of delivery of the goods, or both, is postponed.

9. In the decision of Hoe Kim Seing v. Maung Ba Chit reported in AIR 1935 Privy Council 182, it was observed that the intention of the parties is the decisive factor in determining the time when the property in the goods passes to the buyer and if that intention is expressed in the contract itself, no difficultly arises. But where the contract contains no such express provision, the intention has to be gathered from the conduct of the parties and the circumstances of the case.

9.1 In the decision of Agricultural Market Committee v. Shalimar Chemical Works ltd. reported in AIR 1997 Supreme Court 2502, reliance on which was placed by the

learned advocate for the respondent no.2 also it was observed by the Hon'ble Supreme Court in para.40 as follows :

> “40. In order that Section 20 is attracted, two conditions have to be fulfilled :(i) the contract of sale is for specific goods which are in a deliverable state; and (ii) the contract is an unconditional contract. If these two conditions are satisfied, Section 20 becomes applicable immediately and it is at this stage that it has to be seen whether there is anything either in the terms of the contract or in the conduct of the parties or in the circumstances of the case which indicates a contrary intention. This exercise has to be done to give effect to the opening words, namely, “Unless a different intention appears” occurring in Section 19(3). In Hoe Kim Seing v. Maung Ba Chit, AIR 1935 PC 182, it was held that intention of the parties was the decisive factor as to when the property in goods passes to the purchaser. If the contract is silent, intention has to be gathered from the conduct and circumstances of the case.”

10.Before scrutinising the material produced before the Court minutely to ascertain the intention of the parties, one may also take note of the provisions contained in section 22 of the Sale of Goods Act which provide that where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof.

11. In the present petition, the petitioner has produced at Annexure-F collectively certain documents such as invoices, bills and receipts etc. exchanged between the respondent no.2 and its supplier of castor seeds. At page-33 thereof is a bill issued by one Manish Trading Company of Naroda, Ahmedabad. The bill is dated 03-05-2004 and is for supply of 150 bags of castor weighing 75 kilos each. The rate charged is Rs.305/- per 100 kg. The total quantity shown is 112.50 quintals and the total amount claimed is Rs. 1,71,562/-. In the said bill dated 03-05-2004, it is indicated that payment is yet to be made. At page 28 to the compilation, there is a Purchase Voucher/ Remittance Note issued by the respondent no.2. It is not in dispute that the said Purchase Voucher/Remittance Note pertains to the same consignment transported by the Manish Trading Company under the bill dated 03-05-2004. The purchase voucher indicates that the quantity of the castor seeds received was short by 37.50 kilos. Weight of bags of 150 kilos was also deducted from the quantity of castor seeds. The agreed rate of Rs. 305/- for 100 kilos remained constant and the respondent no.2 therefore, agreed to remit a total amount of Rs. 1,70,991/- to the

Manish Trading Company. The learned advocate Shri Patel for the respondent no.2 upon a query from the Court stated under instructions that the respondent no.2 weighs consignment received from the sellers within the market area for the purpose of finding out shortfall or pilferage and makes the payment to the extent of actual quantity received. This is also evidenced by comparing the documents at page-28 and 33 mentioned above. Though Manish Trading Company has claimed to have transported castor seeds weighing 112.50 quintals, respondent no.2 made payment after weighing the consignment and finding out the correct weight of the castor seeds received by it. The learned advocate Shri B.S. Patel also submitted that if there is any substantial shortfall in the weight of the castor seeds that the respondent no.2 may receive, the seller would seek to recover the loss from the transporters. In my view this would clinch the issue. Combined effect of the evidence noted above would be that though the respondent no.2 places order for purchase of castor seeds from its suppliers from outside the market area, no payment is immediately made for the same. On demand by the respondent no.2, the quantity of castor so requisitioned is transported by the supplier to be received by respondent no.2 within

the market area. The consignment so received is weighed by the respondent no.2 within the market area for the purpose of finding out exact weight of castor seeds received by it. The payment at the agreed rate is made to the supplier thereafter, on the exact quantity received by the respondent no.2. All these factors would show that sale was not effected till the consignment was received by the respondent no.2 and weighed within the market area. The assertion of the learned advocate for the respondent no.2 that in case of shortfall or loss or damage during the transport, the seller can claim damage from the transporters, would further demonstrate that respondent no.2 did not become the owner of the goods till he took the physical delivery thereof weighing the same and satisfying itself about the quantity received. It is not a mere formality for finding out the quantity transported but it has essential element of making payment to the extent of quantity received and in case of any drastic shortfall in the quantity, the issue would be between the supplier and the transporter. It would thus appear that in a given case, if against the quantity of 100 quintals of castor seeds supplied by the trader, respondent no.2 received only half of it on account of

loss, damage or pilferage, the respondent no.2 would make payment only for such quantity, leaving it for the trader to recover damages from the transporter. This would also be obviously a case where on account of some untoward and unforeseen circumstances, such as natural calamity or theft, respondent no.2 did not receive the full quantity of castor seeds. The respondent no.2 would be paying only for the quantity received by it and for no more. This would establish that till the castor seeds reach the market area, are weighed by the respondent no.2 and payment thereof is agreed to be made to the tune of quantity received, the castor seeds continue to be of the ownership of the seller. The respondent no.2 becomes the owner of the property only once exact weight of the castor seeds is ascertained and purchase voucher issued. In that view of the matter, I find that the petitioner is justified in contending that the sale of castor seeds did take place within the market area and the petitioner was authorised to charge fees from the respondent no.2 for such purchase.

12. In view of the above conclusion, I do not find that the provisions contained in rule 48 of the said rules

would alter the situation materially. The learned advocate Shri Patel for respondent no.2 had strenuously urged that explanation made in rule 48 of the said rules can be pressed in service only if Agricultural Produce has been weighed or measured in the market area for the purpose of sale and mere weighment of the Agricultural Produce for any other purpose would not be sufficient to conclude that there has been sale of Agricultural Produce within the market area. In so far as legal interpretation of the contentions of the learned advocate for the respondent no.2, Shri Patel is concerned, there can be no dispute about the same. However in view of my conclusion that actual sale took place within the market area and that weighment carried out by respondent no.2 was not merely for the purpose of ascertaining the quantity of the consignment but was for the purpose of completion of sale, the explanation to rule 48(1) of the said rules would in no way alter the situation. Equally sub-rule(2) of rule 48 of the said rules would be of no application in facts of the present case. It is not the case where the agricultural produce is being brought from outside the market area into the market area by an industrial concern situated in the market area. But it is the case where

agricultural produce has been actually bought by the industrial concern within the market area.

13.The second question that calls for consideration is with respect to the insistence of the petitioner that by-product which respondent no.2 sales after extracting oil from the castor seeds is also liable to carry market fees.

14. In this regard as briefly noted earlier, the controversy is whether the product so sold by the respondent no.2 would fall within the meaning of oil cake as specified in the schedule to the Act which agricultural produce is chargeable to market fees. The case of the petitioner is that the schedule does not make any distinction and specifies oil cake as one of the items of agricultural produce on which the petitioner Market Committee can levy market fees. It is the case of the petitioner that respondent no.2 after extracting oil from the castor seeds, sells the remainder thereof within the market area. This product is nothing but residue of the castor seeds which can only be categorised as oil cake and no further distinction or sub-classification is permissible.

15.Reliance is placed on the decision of the Division Bench of this Court dated 22-09-2005 in Letters Patent Appeal No. 335/1996 and connected matters in the case of Agricultural Produce Market Committee, Borsad and others v. State of Gujarat & ors. On the basis of said decision, it was contended before me that when a new product comes into existence and which is being sold, market fee can be validly levied. To the above proposition there cannot be any dispute. The important question here is whether the new product which comes into existence is one which is specified in the schedule to the Act so as to enable the petitioner-Agriculture Produce Market Committee to levy market fee on the same.

15.1 Reliance was placed on the Oxford English Dictionary (Second Edition) where oil cake has been explained as “The cake or mass of compressed seeds (rapeseed, linseed cottonseed, or other kind) which is left after pressing out so much of the oil as can be thus extracted; used a fattening food for cattle or sheep, or as manure”

15.2 Reliance is also placed on the decision of the Hon'ble Supreme Court in the case of M/s. Park Leather Industry(P) Ltd. And another v. State of U.P. and others reported in AIR 2001 Supreme Court 931 to contend that expression used for other Sales Tax Laws should not be used as an assistance for determining the said term for the purpose of the said Act. In the said decision Hon'ble Supreme Court noted that the interpretation has to be on the basis of the expression 'Agricultural produce' as set out in Section 2(a) of the said Act. In so determining decisions based on different statutes such as Sales Tax Laws can be of no assistance. The said decision however, does not lay down the ratio that when the term specified in the schedule is not defined, no reliance can be placed on similar entries in different statutes.

16. The learned advocate Shri Zaveri also submitted that though Gujarat Sales Tax Act does draw a distinction between the Oil cake and de-oiled cake, the term de-oiled cake was added to the schedule to the Act by amendment carried out in the year 1981 in order to prevent large scale tax evasion noticed by the Government.

17.On the other hand, the learned advocate Shri Patel for the respondent no.2 submitted that the respondent no.2 consumes castor seeds for its own industrial purpose, extracts oil from castor seeds through a sophisticated complex industrial process and eventually brings into existence a product which is called de-oiled cake. It is contended that there is vital difference between the oil cake and de-oiled cake and de-oiled cake produced and sold by the respondent no.2 cannot be clubbed with oil cake which is the item, sale or purchase of which is liable to carry market fees as per the Schedule of the said Act. Before the State Government by filing a detailed reply in response to the revision application filed by the petitioner as well as before this Court, respondent no.2 has sought to strengthen the said contention. It is contended that castor seeds purchased by the respondent no.2 go through four stages. First stage is castor seeds itself, after getting it cleaned, the same is processed, which gives castor oil and oil cakes, the castor oil is separated from castor cake further by automatic plant and remainder is Castor oil cake. This castor cake is again put in the plant in the solvent extraction plant and after processing the

castor oil cake, the entire castor oil is extracted and residue is known as de-oiled cake. It is this de-oiled cake which is sold by the respondent no.2 which is vastly different from castor oil cake. It is contended that the petitioner has no authority to levy market fees on sale and purchase of de-oiled cake since de-oiled cake cannot be equated with oil cake.

18. The learned advocate Shri Patel for the respondent no.2 also places reliance on the relevant entires made in the Schedule. II of the Gujarat Sales Tax Act wherein oil cake and de-oiled cake are separately mentioned.

19. He has also placed reliance on chemical analysis report of castor oil cake and de-oiled cake respectively. He pointed out that in castor oil cake, oil content was found to 10.50% whereas in case of de-oiled cake, oil content was 0.62%.

20. The learned advocate Shri Patel tendered today a copy of certificate of “The Solvent Extractors' Association of India” dated 20th December, 2005, in which it is stated that castor seeds contain 40 to 42% oil. Castor

oil is recovered in two stages, firstly castor seed is crushed by processing in oil mills to recover 30-32% of oil and the residue product is called castor cake which contains about 10% of oil and is commonly known as castor seed oil cake. In the second stage, the castor oil cake produced in the oil mill is further processed by solvent extraction process to recover the balance castor oil in the cake and residue produce is called castor seed meal or castor seed extraction or castor seed de-oiled cake having less than 1% of oil. The certificate also indicates that castor seed oil cake and castor seed mill/extraction are two different products having separate Harmonised System Classification.

21.From the above material it is sought to be contended on behalf of the respondent no.2 that oil cakes prepared from castor seed after initial mechanical process of oil extraction is a vastly different product from the de-oiled cake which is derived by further subjecting the oil cake to a sophisticated complex process of oil extraction by solvent extraction process which in turn ensures that against nearly 10% of residue of oil in oil cakes, less than 1% oil is left

in de-oiled cake. It is also contended that on account of higher oil contents, oil cake is a superior agricultural manure as compared to de-oiled cake on account of substantially diminished percentage of residual oil contents in it. It is contended that in the market also, these two items are separately described fetching different market price. It is therefore, the contention of respondent no.2 that the petitioner-Agricultural Market Committee cannot levy market fees on sale of de-oiled cake which is not specified as one of the agricultural produces under the schedule of the said Act.

22.It is not in dispute that term oil cake has not been defined under the said Act or rules made thereunder. As observed by the Hon'ble Supreme Court in the case of M/s. Rathi Khandasari Udyog Vs. Uttar Pradesh reported in (1985)2 Supreme Court Cases 485, since the term oil cake has not been defined under the Act, it must be construed in its popular sense. That is to say in the sense in which people conversant with the subject matter with which the statute is dealing would attribute to it.

23.The process undertaken by respondent no.2 for extraction of castor oil from the castor seeds purchased by it is not seriously in dispute. The fact that ultimately by-product which respondent no.2 claims to be de-oiled cake which the respondent no.2 sells in the market and on which the petitioner is seeking to levy market fee contains less than 1% castor oil is also not seriously in dispute. The respondent no.2 has explained the complex process through which the castor seeds are made to undergo so as to extract maximum possible oil out of it. At the first stage after cleaning and separating raw seeds from husk etc., the castor seeds are crushed through mechanical devices to extract oil from the same. This mechanical process would obviously leave substantial amount of oil in the oil cake which may come into existence after extraction of oil. If this residual product was sold by respondent no.2 in the market, same would squarely fall under the head of oil cake. To that extent there is no serious dispute raised by the respondent no.2 also. However, respondent no.2 does not sale the oil cake which comes into existence by extracting oil from castor seeds through the above mentioned mechanical process. The oil cake so produced is made to undergo further extensive

sophisticated and complex process by which instead of leaving 10% oil contents in the oil cake, the percentage of residue of the oil is brought down to less than 1%. By sophisticated means of operation, the wastage of oil is minimised and the oil extraction percentage is improved. Ultimately therefore, final by-product which comes into existence and which is sold by the respondent no.2 in the market is de-oiled cake having less than 1% oil contents. It can thus be seen that oil cake and de-oiled cake are two separate products. By very nature of terminology used for both products it would indicate that oil cake would contain the residue of oil seeds which would also include some percentage of oil. It is only when almost entirely the oil cake is devoid of oil contents that it is labelled as de-oiled cake. Gujarat Sales Tax Act also takes cognizance of two different products namely oil cake and de-oiled cake. I am only drawing further support from these entries contained in Gujarat Sales Tax Act and not for the purpose of interpretation of the term so defined in the said Act. As noted said Act does not define the term oil cake. From the available material on record, such as difference in the contents of oil in oil cake and de-oiled cake, cognisance of different

terms namely oil cake and de-oiled cake in the Gujarat Sales Tax Act, the difference in the process of oil extraction which would lead to by-product of the oil cake and de-oiled cake, the certificate produced on record by the respondent no.2 indicating the difference of percentage of oil contents in oil cake and de-oiled cake, it can be seen that two are independent, separate and distinct products and so understood in common parlance as well. The term “oil cake” contained in the schedule therefore, in my opinion would not include de-oiled cake. The attempt on the part of the petitioner-Agriculture Produce Market Committee to levy market fees on sale and purchase of such de-oiled cake in my opinion is not permissible. Schedule to the Act specifies oil cake as one of the agricultural produces on which market fee can be charged. In view of my conclusion, that term oil cake does not include de-oiled cake, I find that petitioner is not authorised to charge market fees on the de-oiled cake sold by the respondent no.2. The difference in process which would lead to obtaining oil cake and de-oiled cake was also noticed by Hon'ble Supreme Court in the case of State of A.P. and others v. M/s. Modern Proteins ltd. reported in 1994 Supp (2) Supreme Court Cases 496 on

which reliance was placed by the leaned advocate for the respondent no.2. It was noted that groundnut seeds obtained after the process of decortication are of high grade quality, rich in proteins but free from harmful materials processed in the expeller and the outcome is groundnut oil and groundnut oil cake. The groundnut oil cake again is pressed through the solvent in which “food hexane” is sprayed resultantly groundnut oil and groundnut de-oiled cakes are obtained.

24. In the result, the petition is partially allowed. In so far as the question of the petitioner-Agriculture Produce Market Committee demanding market fees from the respondent no.2 for its purchases of oil seeds is concerned, I find that same is justified. The respondent no.1 erred in quashing and setting aside the impugned order dated 19-04-2005. The petition to that extent deserves to be and is hereby allowed. On the other hand, I find that stand of the petitioner that de-oiled cake sold by respondent no.2 is chargeable to market fees is not justified. To that extent the petition fails. In the result, rule is made absolute to the above extent with no order as to costs.

25.Now that this Court has cleared the issues about the demand made by the petitioner, it will be open for the petitioner to proceed further with execution thereof in accordance with law.

(Akil Kureshi,J.)

(raghu)